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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MANUEL CASANOVA GANDARILLA, Defendant and Appellant.	H027317 (Santa Clara County Super. Ct. No. CC247532, CC234848) H027221 (Santa Clara County Super. Ct. No. CC272571)

These consolidated appeals by defendant Manuel C. Gandarilla arise from three criminal cases below. In the first two cases, defendant entered guilty pleas to drug offenses but he failed to appear for sentencing. In the third case, defendant faced new drug charges, as well as charges arising out of an armed altercation with a peace officer. That case was tried to a jury, which found defendant guilty as charged on all counts. A number of special allegations were admitted or found true. In a consolidated sentencing hearing that covered all three cases, the trial court sentenced defendant to a total of 21 years in state prison.

Defendant asserts sentencing error with respect to all three cases. In addition, as to the case tried to the jury, defendant challenges the denial of his motion to suppress evidence found in a warrantless search of his vehicle. We find no merit in defendant's contentions. We therefore affirm the judgment.

BACKGROUND

This proceeding involves two appeals, which we consolidated – on defendant's motion – for purposes of briefing, oral argument, and decision. The two appeals arise from three separate criminal cases filed against defendant in Santa Clara County Superior Court. The incidents that gave rise to those three matters took place in August 1999, December 2001, and December 2002.

I. Appeal Number H027317: Factual and Procedural History

Because defendant entered guilty pleas in the two underlying cases, our factual summary is drawn from the probation report.

A. Facts and Charges

Case Number CC247532

This first case against defendant arose in August 1999, when he was found with 22.4 grams of methamphetamine. Defendant admitted to the arresting officer that he was on parole and that he used and sold drugs.

In a two-count complaint filed in May 2002, defendant was charged with felony possession for sale of controlled substances. (Health & Saf. Code, §§ 11351, 11378.) As a sentence enhancement, the complaint also alleged that defendant had suffered a prior conviction for auto theft and had served a prison term for that offense. (Pen. Code, § 667.5, subd. (b); see Veh. Code, § 10851, subd. (a).)

Case Number CC234848

The second case against defendant arose more than two years later, in December 2001, as a result of defendant's failure to stop at a traffic light. Defendant admitted having a suspended license and he exhibited symptoms of intoxication. The officer involved in the traffic stop therefore arrested defendant and impounded his car. An inventory search of the vehicle revealed two plastic bags containing 17.6 grams of methamphetamine.

In January 2002, defendant was charged in a criminal complaint with two felonies and two misdemeanors for possessing and transporting a controlled substance for sale, being under the influence of a controlled substance, and driving with a suspended license. (Health & Saf. Code, §§ 11378, 11379, subd. (a), 11550, subd. (a); Veh. Code, § 14601.1, subd. (a).) The complaint also alleged defendant's prior conviction and prison term. (Pen. Code, § 667.5, subd. (b).)

B. Guilty Pleas

In September 2002, defendant entered guilty pleas to four of the six charged counts in the two matters. In the first case (CC247532), defendant pleaded guilty to count 2 of the two-count complaint. In the second case (CC234848), he pleaded guilty to counts 1, 3, and 4. In addition, defendant admitted the strike allegation in each case. The court dismissed the two remaining felony charges.

C. Sentencing: Failure to Appear

Sentencing in the two cases was set for October 2002. Defendant failed to appear, and bench warrants issued for his arrest.

II. Appeal Number H027221: Factual and Procedural History

Case Number CC272571

The incident that gave rise to the third case against defendant took place on December 25, 2002. For the most part, the facts that follow are drawn from evidence presented at the hearing on the motion. That evidence includes the preliminary hearing transcript.

A. Facts

The Incident with Officer Lee

At about 11 o'clock on Christmas morning 2002, San Jose Police Officer David Lee was on routine patrol, in uniform and driving a marked patrol car. He was checking the registration of cars parked at the Valley Inn Motel on Alameda Street in San Jose. One of the cars in the motel's parking lot was a blue Ford van with tinted windows,

which Officer Lee learned was registered to defendant. Lee knew defendant from high school, and he was aware that defendant had a criminal history. A check revealed that defendant had several outstanding felony arrest warrants.

Officer Lee waited across the street from the motel. A short time later, Lee saw defendant drive the van toward the motel parking lot exit. The van stopped in the motel's driveway and defendant got out and opened the hood.

Officer Lee approached defendant. Lee informed defendant about his warrants and attempted an arrest, grabbing defendant's left hand and pulling it behind his back. But defendant – an outstanding wrestler in high school – broke free of Lee's grasp and threw the officer to the ground. The officer suffered a sprained shoulder and a broken finger.

During the struggle, defendant withdrew a shiny object from his pocket. Lee initially thought that the object was drug paraphernalia, and he told defendant: "Don't throw it, just go with the arrest." But as Lee soon realized, the object was a small silver handgun. Defendant pointed the gun directly at the officer. Lee put his hands up, with his palms toward defendant, "and told him not to do it. It's not worth it." Lee attempted to calm defendant by calling him by name and reminding him that they had attended high school together.

Officer Lee then backed away from defendant toward his patrol car. As the officer turned and attempted to draw his weapon, defendant struck him from behind, pushing him into the front of the patrol car. When Lee turned, defendant was "right there on top of me again, with the gun drawn." Defendant then struck Lee, either with his fist or with the butt of the gun, and warned him off. With his hands raised in a gesture of surrender, Lee backed away. He told defendant: "It's Christmas. You should see your kids. You don't want to hurt anyone, and I don't want to hurt anyone. Just go see your kids." Lee made these statements because he "didn't want to get shot." As defendant backed away and lowered his gun, Lee attempted to use his shoulder police radio to call for assistance.

Defendant raised the gun again and ordered the officer not to use his radio. Defendant then backed up to his van, turned, got in, and drove away.

Officer Lee attempted to pursue defendant, but was unable to locate him. Lee summoned assistance. He gave a full description of defendant and his vehicle and he advised that defendant had a gun. San Jose Police Officer Veronica Damon was among the officers who responded.

The Search of Defendant's Vehicle

Less than an hour later, Officer Damon located defendant's van in the parking lot of the Santa Clara Caltrain station. She called for backup and at least 10 officers arrived at the scene. Because of the van's tinted windows, the officers were unable to see inside. The officers issued repeated commands to anyone in the vehicle to come out, but no one responded. The officers therefore "blew out" the van's windows and searched it.

Officer Damon led the search of the vehicle, assisted by San Jose Police Officer Mark Riles. They did not have a search warrant. The officers found a gym bag between the front seats of the van. Officer Damon opened the bag to look for the handgun used in the assault on Officer Lee. The bag contained narcotics, plastic bags, and more than $8,700 in cash. Damon decided to have the van impounded. She completed a California Highway Patrol form in which she identified the vehicle as "abandoned."

Prior to towing, at Officer Damon's request, Officer Riles inventoried the van, listing the items seized from it. The inventory was conducted in accordance with police department policy. The seized items included the narcotics, totaling about 48.8 grams of cocaine and 317.49 grams of methamphetamine. The inventory also included paraphernalia indicative of drug sales, including scales, knives, empty wallets, empty baggies, and "a ledger documenting deliveries for large quantities of narcotics to different clients."

Defendant's Arrest

The following morning, defendant was located at a Days Inn in San Jose. Police surrounded the motel and evacuated all occupants except defendant, who was in room 25. Among those at the scene was San Jose Police Sergeant Larry Esquivel, the supervisor of one of the police tactical teams. At one point, gunfire was heard in defendant's room. Sergeant Esquivel telephoned defendant, who confirmed that the gun had gone off. After a three-hour standoff, defendant emerged and surrendered to police. A small revolver was recovered from defendant's room, along with evidence of narcotics packaging.

B. Charges

In October 2003, defendant was charged by information with nine felonies.

The first three counts, which arose from defendant's attack on Officer Lee, included assault with a firearm on a peace officer, battery on a peace officer, and exhibiting a firearm in the presence of a peace officer. (Pen. Code, §§ 245, subd. (d)(1); 242-243, subd. (c)(2); 417, subd. (c).)

Counts 4 and 5 alleged defendant's possession for sale and transportation of methamphetamine. (Health & Saf. Code, §§ 11378; 11379, subd. (a).) Counts 7 and 8 alleged defendant's possession for sale and transportation of cocaine. (Health & Saf. Code, §§ 11351; 11352, subd. (a).)

The remaining two counts, 6 and 9, alleged that defendant was an ex-felon in possession of a firearm on two separate occasions – December 25th and 26th, 2002. (Pen. Code, § 12021, subd. (a)(1).)

As sentence enhancements, the information alleged that defendant had served a prior prison term, that he had suffered a prior drug conviction, and that he was out on bail at the time of the current crimes. (Pen. Code, § 667.5, subd. (b); Health & Saf. Code, § 11370.2, subd. (c); Pen. Code, § 12022.1.) In addition, the information alleged prior drug convictions limiting defendant's eligibility for probation. (Pen. Code, § 1203.073,

subd. (b)(2).) The information also specially alleged that defendant personally used a firearm in connection with the offenses alleged in counts 1, 2, 4, and 5. (Pen. Code, § 12022.5, subd. (a)(1) and (c).)

The case proceeded to trial.

C. Defendant's Suppression Motion

After the jury was impaneled, but outside of its presence, defendant moved to suppress the evidence seized from his van. (Pen. Code, § 1538.5.) The motion was heard on January 26, 2004. After the presentation of evidence and argument on the motion, the court took it under submission. The court denied the motion the following day. The matter then proceeded immediately to jury trial.

D. Trial

A number of police officers testified at trial, including Lee, Damon, Riles, and Esquivel. That testimony described defendant's altercation with Officer Lee, the search of defendant's van, and the standoff that ended with defendant's arrest. The trial evidence also included the drugs and paraphernalia seized from defendant's van. The parties stipulated to the weight of the narcotics.

During trial, but out of the presence of the jury, defendant admitted all of the sentence enhancement allegations, including his prior convictions and the fact that he was on bail at the time of the current crimes.

Following the presentation of evidence and argument, the court instructed the jury. The jury deliberated for part of one afternoon and part of the following morning before returning its verdict. The jury found defendant guilty as charged on all nine counts, and it found true the specific arming allegations attached to counts 1, 2, 4, and 5.

III. Consolidated Sentencing Hearing

Sentencing for all three cases took place at a consolidated hearing held in March 2004. The court imposed a prison term totaling 21 years, calculated as described below.

A. Case Number CC272571

In this matter, designated as the principal case, defendant's sentence totaled 20 years and 4 months. As to the charges and allegations determined by the jury, the court sentenced defendant as follows:

Count 1: 10 years (the six-year midterm on the assault charge plus the four-year midterm on the arming enhancement);

Count 2: a concurrent term of six years (the two-year midterm on the battery charge plus the four-year midterm on the arming enhancement);

Count 3: a stayed term of two years (the midterm on the firearm exhibition charge, stayed under Penal Code section 654);

Count 4: a stayed term of six years (the two-year midterm on the methamphetamine possession charge plus the four-year midterm on the arming enhancement);

Count 5: a consecutive term of two years and four months (one-third of seven years, the sum of the three-year midterm on the methamphetamine transportation charge plus the four-year midterm on the arming enhancement);

Count 6: a concurrent term of two years (the midterm on the first weapon possession charge);

Count 7: a stayed term of three years (the midterm on the cocaine possession charge);

Count 8: a consecutive term of 16 months (one-third of the four-year midterm on the cocaine transportation charge);

Count 9: a consecutive term of eight months (one-third of the two-year midterm on the second weapon possession charge).

With respect to the other sentence enhancements, the court imposed the following additional terms:

For the prior prison term, one year (Pen. Code, § 667.5, subd. (b));

For the prior drug conviction, three years (Health & Saf. Code, § 11370.2, subd. (c));

For the on-bail enhancement, two years (Pen. Code, § 12022.1).

B. Case Number CC234848

The sentence in this matter added eight months to defendant's prison term. The court sentenced defendant on the felony methamphetamine possession count to eight months (one-third of the two-year midterm on the charge), to run consecutively with the term in the principal case. The court imposed concurrent one-year terms in county jail on the misdemeanor counts. The court struck the prior strike enhancement in the interest of justice. (Pen. Code, § 1385.) Defendant was awarded two days' credit for actual time served.

C. Case Number CC247532

On the sole count in this matter, methamphetamine possession, the court sentenced defendant to a concurrent term of three years (the upper term on the charge). Again, the court struck the prior strike enhancement. Defendant was awarded 507 days of sentence credits.

IV. Appeals

In March 2004, defendant filed a notice of appeal in the principal case (CC272571). That appeal is identified as H027221. The following month, defendant filed a notice of appeal in the other two cases (CC247532 and CC234848). That appeal is H027317. As noted above, we ordered the two appeals consolidated for argument and decision.

CONTENTIONS

In these consolidated appeals, defendant raises three contentions: (1) The trial court erred in denying his suppression motion. (2) The trial court's imposition of

consecutive sentences violates his Sixth Amendment jury trial right as recognized in *Blakely v. Washington* (2004) ___ U.S. ___ [124 S.Ct. 2531] (*Blakely*). (3) The trial court erred by failing to state the reasons for its sentencing choice of consecutive sentences.

DISCUSSION

We consider each of defendant's contentions in turn. In assessing each of defendant's claims, we first describe and then apply the governing legal principles.

I. Suppression Motion

Motions to suppress evidence have both procedural and substantive components. The procedural aspects of suppression motions have their basis in statute, while the underlying substantive principles derive from federal constitutional law.

A. Procedural Framework

Procedurally, motions to suppress evidence are governed by Penal Code section 1538.5. (*People v. Williams* (1999) 20 Cal.4th 119, 127.) Defendants seeking to suppress evidence "must set forth the factual and legal bases for the motion, but they satisfy that obligation, at least in the first instance, by making a prima facie showing that the police acted without a warrant. The prosecution then has the burden of proving some justification for the warrantless search or seizure, after which, defendants can respond by pointing out any inadequacies in that justification. [Citation.]" (*Id.* at p. 136.)

" ' "In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated, [Citations.]" ' " (*People v. Ayala* (2000) 23 Cal.4th 225, 255.)

With respect to the first step in that process, the superior court hearing the motion in the first instance "sits as a finder of fact with the power to judge credibility, resolve

conflicts, weigh evidence, and draw inferences . . . ." (*People v. Laiwa* (1983) 34 Cal.3d 711, 718.)

In reviewing the trial court's ruling on a motion to suppress, "we uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness." (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

B. Substantive Law Principles

Search and seizure issues are decided under federal constitutional law. (*People v. Ayala, supra,* 23 Cal.4th at pp. 254-255.) The guiding principles are grounded in Fourth Amendment jurisprudence as articulated by the United States Supreme Court.

1. General Principles

The Fourth Amendment to the United States Constitution bans all unreasonable searches and seizures. (See, e.g., *United States v. Ross* (1982) 456 U.S. 798, 825.)

"The ultimate standard set forth in the Fourth Amendment is reasonableness." (*Cady v. Dombrowski* (1973) 413 U.S. 433, 439. Accord, *Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 652.) "The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." (*Bell v. Wolfish* (1979) 441 U.S. 520, 559.) "The inquiry is substantive in nature, and consists of a subjective and an objective component." (*People v. Ayala, supra,* 23 Cal.4th at p. 255.) To claim Fourth Amendment protection, the defendant must show " 'a subjective expectation of privacy that was objectively reasonable.' [Citation.]" (*Ibid.*)

"Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant [citation]." (*Vernonia School Dist. 47J v. Acton*, *supra*, 515 U.S. at p. 653.) But

there are "a few specifically established and well-delineated exceptions" to the warrant requirement. (*United States v. Ross, supra,* 456 U.S. at p. 825, internal quotation marks and citations omitted.) Among them is the so-called "automobile exception." (See, e.g., *California v. Acevedo* (1991) 500 U.S. 565, 580; *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1667.) Likewise, "inventory searches are now a well-defined exception to the warrant requirement of the Fourth Amendment." (*Colorado v. Bertine* (1987) 479 U.S. 367, 371.)

2. Vehicle Searches

The automobile exception to the warrant requirement "applies only to searches of vehicles that are supported by probable cause." (*United States v. Ross, supra,* 456 U.S. at p. 809, fn. omitted.) "In this class of cases, a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained." (*Ibid.*, fn. omitted.) "In other words, the police may search without a warrant if their search is supported by probable cause." (*California v. Acevedo, supra,* 500 U.S. at p. 579.) "The scope of a warrantless search based on probable cause is no narrower – and no broader – than the scope of a search authorized by a warrant supported by probable cause." (*United States v. Ross, supra,* 456 U.S. at p. 823.)

As the United States Supreme Court has long held, "a warrantless search of an automobile, based upon probable cause to believe that the vehicle contained evidence of crime in the light of an exigency arising out of the likely disappearance of the vehicle, [does] not contravene the Warrant Clause of the Fourth Amendment." (*California v. Acevedo, supra,* 500 U.S. at p. 569, citing *Carroll v. United States* (1925) 267 U.S. 132, 158-159.)

Where probable cause exists, the search may extend to closed containers within the vehicle. "The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." (*California v. Acevedo, supra,* 500 U.S. at p. 580. See also, e.g., *Wyoming v. Houghton* (1999) 526

U.S. 295, 307 [passenger's belongings]; *People v. Chavers* (1983) 33 Cal.3d 462, 468 [glove compartment and shaving kit within it].)

2. Inventory Searches

"An inventory search is the search of property lawfully seized and detained, in order to ensure that it is harmless, to secure valuable items (such as might be kept in a towed car), and to protect against false claims of loss or damage." (*Whren v. U.S.* (1996) 517 U.S. 806, 811, fn. 1.) An "inventory search is not an independent legal concept but rather an incidental administrative step" that generally occurs in connection with an arrest. (*Illinois v. Lafayette* (1983) 462 U.S. 640, 644.) "A range of governmental interests supports an inventory process." (*Id.* at p. 646.) As both the United States Supreme Court and the California Supreme Court have recognized, "police have a legitimate interest in taking an inventory of the contents of a vehicle, including closed containers inside that vehicle, before towing it. This inventory serves 'to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.' [Citation.]" (*People v. Williams*, *supra*, 20 Cal.4th at p. 126, quoting *Colorado v. Bertine, supra,* 479 U.S. at p. 372. See also, e.g., *Illinois v. Lafayette, supra,* 462 U.S. at p. 646.)

"Inventory searches must be reasonable under the Fourth Amendment." (*People v. Green* (1996) 46 Cal.App.4th 367, 374.) In this narrow context, however, reasonableness does not equate with probable cause. As the United States Supreme Court has explained, "the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administration regulation, is not accorded to searches that are *not* made for those purposes. [Citations.]" (*Whren v. United States, supra,* 517 U.S. at pp. 811-812.) Nevertheless, "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." (*Florida v. Wells* (1990) 495 U.S. 1, 4. Accord, *People v. Williams*, *supra*, 20 Cal.4th at p. 126.) For an inventory search to satisfy Fourth Amendment standards, two

requirements generally must be met. First, the initial decision to impound the vehicle must be justifiable. "An officer may exercise discretion in deciding when to impound an automobile so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity . . . ." (*People v. Green, supra,* 46 Cal.App.4th at pp. 372-373, internal quotation marks and citations omitted.) Second, the ensuing inventory search "should be carried out pursuant to standardized procedures . . . ." (*Id*. at p. 374.) "The policy or practice governing inventory searches should be designed to produce an inventory. The individual police officer must not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of crime,' [citation]." (*Florida v. Wells, supra,* 495 U.S. at p. 4.) Governing case law "does not require a *written* policy governing closed containers or a policy that leaves no room for police discretion, but the record must at least indicate that police were following some 'standardized criteria' or 'established routine' when they elected to open the containers [citation] . . . ." (*People v. Williams, supra,* 20 Cal.4th at p. 127.)

C. Analysis

Defendant argues that the police did not have probable cause to search his van and the closed containers within it. He separately challenges the validity of the inventory search. We consider and reject each claim in turn.

1. Probable Cause

Defendant argues that the trial court erred "by accepting the police officers' stated reasons for conducting the search without applying the proper legal standard for objectively determining whether there was probable cause to support the warrantless search." He seeks to distinguish cases such as *Houghton, Acevedo, Ross,* and *Chavers*, where the courts found probable cause for the vehicle searches. (*Wyoming v. Houghton, supra,* 526 U.S. 295; *California v. Acevedo, supra,* 500 U.S. 565; *United States v. Ross, supra,* 456 U.S. 798; *People v. Chavers, supra,* 33 Cal.3d 462.) Defendant points out

that "there was no specific information here from a confidential reliable informant that the gun or drugs were inside the van or gym bag." He also observes that "there was no contraband or evidence in plain view which would have provided the officers with probable cause to search the vehicle." Moreover, defendant argues: "The fact that the van was legally parked at a Caltrain station gave rise to the reasonable inference" that defendant had fled elsewhere by train.

Given the standard of review that governs our analysis of the factual issues, defendant's argument misses the mark. The issue is not whether the trial court could have drawn inferences favoring his view that the police lacked probable cause to search the van; instead, the question here is whether substantial evidence supports the court's implied factual finding to the contrary. (*People v. Hughes, supra,* 27 Cal.4th at p. 327.) A prima facie showing is not required to establish probable cause; a probability of criminal activity will suffice. (*Illinois v. Gates* (1983) 462 U.S. 213, 235.) We apply "the totality-of-the-circumstances approach" to determine whether probable cause existed for the warrantless search. (*People v. Carvajal* (1988) 202 Cal.App.3d 487, 498, citations omitted. See also *Illinois v. Gates, supra,* 462 U.S. at pp. 230-231.) As the United States Supreme Court has emphasized: "Perhaps the central teaching of our decision bearing on the probable cause standard is that it is a 'practical, nontechnical conception.' [Citation.]" (*Illinois v. Gates, supra,* 462 U.S. at p. 231.) In other words, "probable cause is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules." (*Id.* at p. 232.) The fact that the police neither relied on a "confidential informant" nor saw contraband in plain view thus is not determinative of the question. (*Bell v. Wolfish, supra,* 441 U.S. at p. 559 [no single, definitive test].)

Here, there is ample evidence that the police officers had probable cause to search defendant's vehicle and its contents. At the time of the search, the police were aware that defendant had just assaulted a fellow officer, that he possessed a firearm, and that he was

an ex-felon with outstanding arrest warrants. There thus existed a reasonable likelihood that defendant, his gun, or both would be found in the van. (See *United States v. Ross, supra,* 456 U.S. at p. 808.) As Officer Damon testified: "Priority was for the handgun." Given the fact that "we still had an armed outstanding felon," she testified, "it was important that we determine whether the handgun was still in the vehicle." Additionally, the police had a description of the vehicle, including its license plate number. There thus existed a high degree of certainty that the van was the same vehicle that defendant had used to evade arrest. (See *California v. Acevedo, supra,* 500 U.S. at p. 569.) On these facts, there was probable cause to search the van for the gun, both for reasons of public safety and to secure evidence of criminal wrongdoing. (See *Cady v. Dombrowski, supra,* 413 U.S. at p. 447; *California v. Acevedo, supra,* 500 U.S. at p. 569.) For the same reasons, the police were justified in also searching the gym bag for the gun, even after ascertaining that the van was unoccupied. (*California v. Acevedo, supra,* 500 U.S. at p. 580.)

Nor do we find merit in defendant's assertion that the trial court "committed a legal error" by failing to apply the proper standard. Defendant complains: "The trial court's stated reasons here are so general and vague that they could be used to justified almost any warrantless search at any time or place." He further complains that the court did not make a specific finding of probable cause. (Cf., *People v. Williams*, *supra*, 20 Cal.4th at p. 124 [trial court denied motion to suppress without stating its reasons].) Whatever the reasoning of the trial court, on appeal, "we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness." (*People v. Hughes, supra,* 27 Cal.4th at p. 327.) To pass constitutional muster, there must be probable cause for the search. (*California v. Acevedo, supra,* 500 U.S. at p. 579.) As explained above, probable cause existed here.

2. Inventory Search

Defendant separately challenges the inventory search of his vehicle. That challenge likewise lacks merit.

As explained above, an inventory search must be reasonable in order to comply with Fourth Amendment dictates. (*People v. Green, supra,* 46 Cal.App.4th at p. 374.) Reasonableness generally depends on (1) sufficient justification for the impound decision and (2) a search under standardized procedures. Both prongs of that standard are satisfied here.

First, Officer Damon's decision to impound the vehicle was warranted. For one thing, the decision operated to protect the police and the public, since the whereabouts of the gun were then unknown. (See *Colorado v. Bertine, supra,* 479 U.S. at p. 372; *Illinois v. Lafayette, supra,* 462 U.S. at p. 646; *Cady v. Dombrowski, supra,* 413 U.S. at p. 443; *People v. Williams*, *supra*, 20 Cal.4th at p. 126.) For another thing, the decision finds support in statutory provisions permitting the impound of vehicles where "a peace officer has probable cause to believe that vehicle was used as the means of committing a public offense." (Veh. Code, § 22655.5; see *People v. Green, supra,* 46 Cal.App.4th at p. 372.) The decision to impound defendant's van therefore was reasonable.

Second, the search itself was executed according to standardized procedures. (See *Florida v. Wells, supra,* 495 U.S. at p. 4; *People v. Williams, supra,* 20 Cal.4th at p. 127; *People v. Green, supra,* 46 Cal.App.4th at pp. 372-373.) Here, Officers Damon and Riles testified that they followed standard police department procedures in inventorying the van and its contents, including the gym bag. The manner in which the inventory search was conducted thus was in compliance with Fourth Amendment standards of reasonableness.

D. Conclusion

The trial court did not err in denying defendant's motion to suppress the evidence found in his van and in the gym bag. The warrantless search by police in this case was

supported by probable cause, and the ensuing inventory search was reasonable. The search therefore satisfied Fourth Amendment constitutional standards.

II. *Blakely* Claim

Defendant's second claim of error in these consolidated appeals rests on the trial court's imposition of consecutive sentences, which he asserts as a Sixth Amendment violation under *Blakely*. (*Blakely, supra,* ___ U.S. ___ [124 S.Ct. 2531].)

Under the general rule announced in *Blakely*, the state may not constitutionally impose punishment greater than that warranted by facts proved to a jury beyond a reasonable doubt. (*Blakely, supra,* ___ U.S. at p. ___ [124 S.Ct. at p. 2536].)

A. Forfeiture

At the threshold, we rebuff the People's contention that defendant has failed to preserve an objection under *Blakely,* because he raised no similar objection in the trial court. We have rejected similar contentions in several recent cases. (See *People v. Harless* (2004) 125 Cal.App.4th 70; *People v. Ackerman* (2004) 124 Cal.App.4th 184 [petition for review filed Dec. 21, 2004 (S130086)]; *People v. Jaffe* (2004) 122 Cal.App.4th 1559 [petition for review granted Jan. 26, 2005 (S129344)]; *People v. Barnes* (2004) 122 Cal.App.4th 858 [petition for review granted Dec. 15, 2004 (S128931)].) We see no reason to depart from those holdings here. We therefore address the merits of defendant's *Blakely* claim.

B. Blakely's Precepts

We begin by summarizing *Blakely's* central holding. We then discuss its effect on consecutive sentences.

1. Overview of the *Blakely* Rule

In *Blakely*, the high court applied its earlier decision in *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*). (*Blakely*, *supra*, ___ U.S. at p. ___ [124 S.Ct. at p. 2536].)

The basic holding of *Blakely* and *Apprendi* is that punishment cannot exceed that to which the defendant is exposed by virtue of the jury's factual findings. In other words, those facts are what fix the maximum punishment that the court can impose. As a general rule, then, the sentence may not exceed the "prescribed statutory maximum" based on facts that have not been "submitted to a jury, and proved beyond a reasonable doubt." (*Apprendi, supra,* 530 U.S. at p. 490; *Blakely, supra,* ___ U.S. at p. ___ [124 S.Ct. at p. 2536.])

There are two exceptions to this rule. First, the trial court may find "the fact of a prior conviction" without a jury, and that fact may furnish the basis for increased punishment. (*Apprendi, supra*, 530 U.S. at p. 466.) Second, the court may consider facts "admitted by the defendant" in determining the maximum punishment. (*Blakely, supra*, ___ U.S. at p. ___ [124 S.Ct. at p. 2537].)

2. Effect on Consecutive Sentences

The question of *Blakely's* effect on the trial court's authority to impose consecutive sentences is now pending before the California Supreme Court. (See, e.g., *People v. Black* (S126182), review granted July 28, 2004.)

This court recently had occasion to consider this question as well, in *People v. Jaffe*. As indicated above, the Supreme Court recently granted review in that case. We nevertheless adhere to our analysis there, in which we observed that neither *Apprendi* nor *Blakely* indicates what the statutory maximum is for two or more offenses. In short, we believe, neither of those high court decisions creates a jury trial right on the question of whether to impose consecutive sentences.

C. Analysis

With those principles in mind, we turn to the case at hand.

In this case, the trial court cited the following factors in imposing consecutive sentences: "The defendant's prior history, the amount of drugs that were found on the

defendant, his negative probation and parole adjustment in these prior cases and the fact that there are no mitigating factors to support any other sentence."

Defendant contends that the imposition of consecutive sentences here violates *Blakely*, because the cited factors supporting consecutive sentencing (1) were not tried to the jury, (2) were determined by the court using the preponderance standard of proof, and (3) were based on impermissible hearsay in the probation report. The People disagree. They argue that *Blakely* does not apply to consecutive sentences under California's determinate sentencing law. Alternatively, they assert, even assuming *Blakely* does apply, two of the four cited sentencing factors do not implicate that decision, and in any event, any error is harmless.

We agree with the People that this case does not implicate *Blakely*. As we have previously observed, neither *Apprendi* nor *Blakely* indicates what the statutory maximum is for two or more offenses. Both *Blakely* and *Apprendi* involved convictions for a single count. The imposition of consecutive sentences was not at issue in *Blakely,* and there is no indication that *Blakely* was intended to apply to consecutive sentences. (*Blakely, supra,* ___ U.S. ___ [124 S.Ct. at pp. 2534-2536]; *Apprendi, supra,* 530 U.S. at pp. 476-483, 489, fn. 15, 490.) The consecutive sentencing decision can be made only after the accused has been found guilty of multiple offenses – either by his own admission or by his chosen fact-finder beyond a reasonable doubt. That is exactly what happened in this case.

Here, the challenged consecutive sentences arise from separate offenses. In the case tried to the jury (CC272571), the court sentenced defendant consecutively on only three counts: count 5, for methamphetamine transportation on December 25, 2002; count 8, for cocaine transportation on December 25, 2002; and count 9, for being a felon in possession of a weapon on December 26, 2002. The punishment for these separate offenses does not exceed that to which defendant was exposed by virtue of the jury's factual findings. Thus, there is no *Blakely* violation. (Cf., *People v. Groves* (2003) 107

Cal.App.4th 1227, 1231-1232 [no *Apprendi* violation, where trial court imposes consecutive sentences, based on its own determination that defendant committed offenses on separate occasions].) In one of the two earlier cases (CC234848), the court imposed a consecutive sentence on only a single count, for methamphetamine possession in December 2001. The punishment for that distinct offense does not exceed that to which defendant was exposed by virtue of his guilty plea to the charge. Again, therefore, there is no *Blakely* violation.

In sum, we conclude, the decision to impose consecutive sentences in this case fully complies with defendant's federal constitutional rights to jury trial and due process. Neither *Blakely* nor *Apprendi* mandates a jury trial right where, as here, consecutive sentences are imposed for separate offenses. (*People v. Jaffe, supra,* 122 Cal.App.4th at p. 1588.) In light of that conclusion, we need not and do not reach the parties' remaining *Blakely* contentions.

III. Statement of Reasons for Sentencing Choices

Defendant's third and final claim of error rests on his assertion that the sentencing court failed to state the reasons for choosing consecutive sentences. The People respond on the merits, but they also contend that defendant forfeited this claim by failing to assert it at sentencing. As before, we consider the People's forfeiture argument at the threshold.

A. Forfeiture

In order for the forfeiture doctrine to apply, "there must be a meaningful opportunity to object" to the court's sentencing decision. (*People v. Scott* (1994) 9 Cal.4th 331, 356.) "This opportunity can occur only if, during the course of the sentencing hearing itself and before objections are made, the parties are clearly apprised of the sentence the court intends to impose and the reasons that support any discretionary choices." (*Ibid.*) But assuming that such an opportunity has been given, "complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal." (*Ibid.*)

As the People correctly observe, defendant did not specifically object to the court's asserted failure to articulate its reasons for selecting consecutive terms. Nothing in the record suggests that he did not have the opportunity to do so. We therefore conclude that defendant forfeited his claim that the trial court failed to state its reasons for imposing consecutive sentences on some counts. (*People v. Scott, supra,* 9 Cal.4th at pp. 353, 356.) However, defendant also asserts that his counsel was ineffective for failing to object on this ground at sentencing. For that reason – and in that context – we consider his claim on its merits.

B. Statement of Reasons

The trial court cited several factors for imposing a consecutive sentence on count five in the principal case. As noted above, those factors were: "The defendant's prior history, the amount of drugs that were found on the defendant, his negative probation and parole adjustment in these prior cases and the fact that there are no mitigating factors to support any other sentence." The court expressly adopted those reasons for each succeeding consecutive sentence that it imposed. Nothing more is required. (See, e.g., *People v. Smith* (1984) 155 Cal.App.3d 539, 545 ["court is not required to state a separate reason for each consecutive sentence"].) There is no error.

SUMMARY OF CONCLUSIONS

I. The trial court did not err in denying defendant's motion to suppress evidence, since the warrantless search of his vehicle satisfied applicable constitutional standards.

II. The trial court's imposition of consecutive sentences did not violate defendant's Sixth Amendment jury trial right as recognized in *Blakely.*

III. Defendant forfeited his claim that the court failed to state its reasons for imposing consecutive sentences, and the claim has no merit in any event.

DISPOSITION

The judgment of conviction is affirmed.

_____
McAdams, J.

WE CONCUR:

_____
Bamattre-Manoukian, Acting P.J.

_____
Mihara, J.